Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)	CC Docket No. 98-171
	)	
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	)	CC Docket No. 90-571
	)	
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	)	CC Docket No. 92-237 NSD File No. L-00-72
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

REPLY COMMENTS OF
MONTANA INDEPENDENT TELECOMMUNICATIONS SYSTEMS

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I. Introduction.

Montana Independent Telecommunications Systems (MITS)[1] hereby files its reply comments in response to the Federal Communications Commission's (Commission's or FCC's) Report and Order and Second Further Notice of Proposed Rulemaking (Report and Order or 2nd FNPRM) in the above captioned proceeding[2].

II. Summary of MITS' Initial Comments.

In its initial comments, MITS urged the Commission to refrain from adopting any of the connection-based contribution proposals contained in the 2nd FNPRM because the current revenue-based system continues to effectively achieve the statutory goals of funding USF in an equitable, competitively neutral and non-discriminatory manner. There is not enough evidence to support a conclusion that the revenue-based assessment mechanism is not sustainable.

Furthermore, the revenue-based system has already undergone several revisions, modifications and improvements as it has evolved, such as those adopted in the recent Report and Order. MITS urged the Commission to continue to consider modifications to the current assessment mechanisms where necessary, and also to allow adequate time to evaluate whether and the extent to which the recent modifications will address concerns associated with the sustainability of the funding mechanism before making the types of sweeping changes to the contribution system proposed in the 2nd FNPRM.

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[1] MITS' members include Central Montana Communications, Interbel Telephone Cooperative, Nemont Telephone Cooperative, Northern Telephone Cooperative, Project Telephone Company, Triangle Telephone Cooperative Association, and Valley Telecommunications, all headquartered in Montana as well as CC Communications, Inc., headquartered in Fallon, NV.

[2] *In the Matter of Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, *1998 Biennial Regulatory Review –Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanism,* CC Docket No. 98-171, *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990,* CC Dockets No. 90-571, *Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size*, CC Docket No. 92-237, NSD File No. L-00-72, *Number Resource Optimization,* CC Docket No. 99-200, *Telephone Number Portability,* CC Docket No. 95-116, *Truth-in-Billing and Billing Format,* CC Docket No. 98-170.

In addition, MITS referenced the number of other ongoing proceedings that may have significant impacts on the revenue base from which USF funding is drawn, and recommended that the Commission defer any significant structural changes in the contribution mechanism until resolution of these proceedings which could in some cases potentially expand the revenue base from which USF funding is drawn

III. There is Not Enough Evidence that a Revenue-based Contribution Mechanism is Unsustainable.

The overwhelming majority of commenters reject abandoning the revenue-based mechanism and adopting one of the proposals in the FNPRM.[3] While some commenters continue to argue that a revenue-based mechanism will not be sustainable in the long-run, there is insufficient justification to abandon this time-tested method of funding the nation's universal system program.

A. The Recent Changes Should be Given Time to Take Effect and Additional Revisions and Modifications Should be Considered as Appropriate.

The interim changes include the following:

- The "safe harbor" that allows cellular, broadband Personal Communications Service (PCS), and certain Specialized Mobile Radio (SMR) providers to assume that 15 percent of their telecommunications revenues are interstate is increased to 28.5 percent.
- Wireless telecommunications providers are required to make a single election whether to report actual revenues or to use the revised safe harbor for all affiliated entities within the same safe harbor category.

[3] Specifically, see Initial Comments filed by: American Association of Paging Carriers; Association for Communications Technology Professionals in Higher Education; Allied National Paging Association; American Public Communications Council; Arch Wireless Operating Company, Inc.; AT&T Wireless Services, Inc.; Community Action Partnership; Cellular Telecommunications and Internet Association; Consumers Union, *et al*; National Association of the Deaf; American Association of People with Disabilities; Fred Williamson and Associates, Inc.; National Indian Education Association; Industrial Telecommunications Association; j2 Global Communications, Inc.; League of United Latin American Citizens; National Association for the Advancement of Colored People; Association for Telecommunications and Technology Professionals Serving State Government; National Association of State Utility Consumer Advocates; Nextel Communications, Inc.; National Telecommunications Cooperative Association; Concerned Paging Carriers; Qwest Communications International, Inc.; Rainbow/PUSH Coalition; Telecommunications Research & Action Center; TracFone Wireless, Inc.; and Verizon Wireless;

- The existing revenue-based methodology is further modified by basing universal service contributions on contributor-provided projections of collected end-user interstate and international telecommunications revenues, instead of historical gross-billed revenues.

- Also, beginning April 1, 2003, telecommunications carriers will be prohibited from recovering their federal universal service contribution costs through a separate line item that includes a mark-up above the relevant contribution factor.

First, these changes should be given time to take effect and for the results to be analyzed. The changes were the result of significant industry debate and Commission deliberation and should help make the fund more stable and predictable.

Second, the revenue-based funding mechanism has undergone numerous changes since its inception. These types of modifications and revisions should continue to be considered as means to alleviate concerns in the future.

B. Other Measures Should be Considered to Address the Concern Over the Eroding Revenue Base on which Universal Service Funding is Drawn.

While several commenters[4] argue that the revenues on which universal service funding is drawn is eroding, there seems to be some consensus that this is at least partly due to consumers' increasing use of new service packages and new technologies. Some of these new service packages are structured and provisioned in a way that apparently makes identifying the interstate portion difficult. This problem is not new to the industry. Jurisdictional separations issues, while complex, are not insurmountable. Measures that have been used successfully in the past have included safe harbors and traffic studies.

Regarding the eroding revenue base attributed to new technologies such as VOIP and broadband Internet access, mechanisms should be explored to bring revenues from these services into the universal service funding base. While IXC's interstate telecommunications revenues may be declining, there is no evidence that the demand for interstate services are declining.

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[4] See Initial Comment filed by AT&T Corp., Joint Comments filed by SBC Communications, Inc. and BellSouth Corporation, and Initial Comments filed by United States Telecom Association.

IV. Too Many Unanswered Questions and Concerns Remain with respect to the Connections-Based Proposals Outlined in the FNPRM.

Although the Commission Staff analysis of the connections-based contributions proposals was helpful, the proposals still appear somewhat sketchy and incomplete with more development necessary before meaningful evaluation can be completed.

Many parties expressed concern that the connections-based mechanisms are unlawful or otherwise do not comply with established principles. The assessment and recovery of universal service contributions are governed by the statutory framework established by Congress.[5] The clear language in Section 254(b) instructs the Commission to base universal service support mechanisms on the principle that there be specific, predictable and sufficient mechanisms to ensure that quality services be available at just, reasonable and affordable rates to Americans in all regions of the nation.

Section 254(d) also requires every telecommunications carrier that provides interstate telecommunications services to contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service. Finally, Section 2(b) precludes any assessment for federal universal service funding purposes that touches on intrastate services.

The connections-based mechanisms potentially violate some or all of these sections. For example, many commenters have argued that the mechanisms would place an inequitable burden on some classes of carriers (for example paging companies and providers of pre-paid wireless services) as well as on some classes of customers (low income and low volume users of interstate services).[6]

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[5] Communications Act of 1934, as amended, 47 U.S.C. §§ 201, 202, 254. The Telecommunications Act of 1996 amended the Communications Act of 1934. *See* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act).

[6] For example, see Initial Comments filed by the paging industry, Industrial Telecommunications Association, Community Action Partnership, National Association of the Deaf, National Association of State Utility Consumer Advocates, etc.

V. Conclusion.

The revenue-based contribution model is reliable, verifiable, competitively neutral and should be retained. Revenue-based contributions remain the most equitable, non-discriminatory and sustainable method for funding the federal universal service programs.

The proposed connections-based assessment mechanisms lack sufficient details to be adequately evaluated, and create serious concerns that they are unlawful and otherwise inappropriate. Adoption of one of the proposed contributions mechanisms would create uncertainty and invite legal challenges. Rather than embark on a course that would result in significant structural changes to the contribution methodology that are legally suspect and potentially inequitable, the Commission should continue to find ways to improve the revenue-based mechanism to assure that it remains equitable, non-discriminatory and provides for a universal service fund that is sufficient, predictable and sustainable.